



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1030]

RIN 1625-AA87

Security Zone; Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the protection of a very important person (VIP). This VIP will be staying on beachfront property in close proximity to Kailua Bay. It is necessary to restrict waterway access to vessels and persons to prevent waterside threats to the VIP. The security zone encompasses two primary areas from the surface of the water to the ocean floor from the navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. Entry of persons or vessels into the security zone is prohibited unless authorized by the Captain of the Port (COTP) Honolulu or a designated representative.

DATES: This rule is effective from 4:00 PM (HST) on August 30, 2016, through 11:30 PM (HST) on September 2, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-1030. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-1030 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541-4359, email Nicolas.a.jarboe@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
TFR	Temporary final rule
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
VIP	Very Important Person

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) [5 U.S.C. 553 (b)]. This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds those procedures are “impractical, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard further finds that it would be impractical to issue an NPRM with respect to this rule because details of the

VIP's travel to Hawaii were not provided to the Coast Guard until August 9, 2016, preventing the Coast Guard from completing full notice-and-comment rulemaking procedures. Publishing an NPRM and delaying the effective date would be contrary to the security zone's intended objectives, including but not limited to protection of the VIP, mitigation of potential terrorist risks, and enhancing public and maritime security. Publishing a Notice of Proposed Rulemaking (NPRM) and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the VIP. The COTP finds this temporary security zone must be effective by August 30, 2016 to ensure the safety of the VIP during his visit to the Kailua Bay area on the eastern coast of Oahu, Hawaii.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. From August 30, 2016 through September 2, 2016, a VIP of the United States of America plans to visit the Kailua Bay area on Oahu, Hawaii. The security zone encompasses two primary areas from the surface of the water to the ocean floor: (1) the navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and (2) the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. The Captain of the Port of Honolulu (COTP) has determined the potential risks associated with the VIP's visit to the Kailua Bay area render a security zone necessary to ensure the VIP's safety. Entry of persons or vessels into the security zone is prohibited unless authorized by the Captain of the Port (COTP) Honolulu or a designated representative.

IV. Discussion of Comments, Changes, and the Rule

This temporary final rule establishes a security zone from 4:00 PM (HST) on August 30, 2016, through 11:30 pm (HST) on September 2, 2016. The security zone encompasses two primary areas from the surface of the water to the ocean floor: (1) the navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and (2) the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734.

Two (2) shore-side markers will be placed in proximity of the security zone along the security zone boundary and one (1) orange boom will be placed at the canal boundary south of the N. Kalaheo Avenue Road Bridge as visual aids for mariners and public to approximate the zone. An illustration of the security zone will be made available on www.regulations.gov in the docket for this rulemaking, USCG-2015-1030. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

Executive Order s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Coast Guard expects the economical impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation

is based on the limited duration of the zone, the limited geographic area affected by it, and the lack of commercial vessel traffic affected by the zone. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as

follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-1030 to read as follows:

§ 165.T14-1030 Security Zone; Kailua Bay, Oahu, HI.

(a) **Location.** The security zone area is located within the Captain of the Port (COTP) Zone (See 33 CFR 3.70-10) and encompasses two primary areas from the surface of the water to the ocean floor:

(1) The navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and

(2) The navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. The geographic coordinates of the zone include the navigable waters of the Kawainui Canal beginning at a point 21° 24'56" N, 157° 44'58" W, then extending to 21° 25'27" N, 157° 44'21" W (Kapoho Point) including all the waters to the west of a straight line to 21° 25'11" N, 157° 44'39" W, and extending back to the original point 21° 24'56" N, 157° 44'58" W.

(b) **Effective period.** This rule is effective from 4:00 PM (HST) on August 30, 2016, through 11:30 PM (HST) on September 2, 2016.

(c) **Regulations.** The general regulations governing security zones contained in §165.33 apply to the security zone created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing security zones found in this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the COTP or his designated representative.

(3) Persons or vessels desiring to transit the security zone identified in paragraph (a) of this section may contact the COTP through his designated representatives at the Command Center via telephone: (808) 842-2600 and (808) 842-2601; fax: (808) 842-2642; or on VHF channel 16 (156.8 Mhz) to request permission to transit the zones. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by Federal, State, and local agencies.

(d) Notice of enforcement. The COTP will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) Definitions. As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the security zone described in paragraph (a) of this section.

Dated: August 16, 2016.

M.C. Long,

Captain, U.S. Coast Guard,

Captain of the Port, Honolulu.

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